

**COUNTY COUNCIL**  
**OF**  
**TALBOT COUNTY, MARYLAND**

2013 Legislative Session, Legislative Day No. : October 22, 2013

Bill No.: 1255

Expiration Date: December 26, 2013

Introduced by: Mr. Bartlett, Mr. Duncan, Mr. Hollis, Mr. Pack, Ms. Price

**A BILL TO REQUIRE NOTICE TO THE COUNTY OF ALL CLAIMS ASSERTED IN ANY PROCEEDING BY ANY PERSON THAT ANY ACT OR FAILURE TO ACT, OR THE APPLICATION OF ANY ORDINANCE, RULE, REGULATION, OR DECISION OF THE COUNTY, VIOLATES, OR WOULD VIOLATE, THE FEDERAL OR STATE CONSTITUTION, OR ANY STATUTE, RULE, OR REGULATION; TO REQUIRE THAT THE COUNTY, IN ITS EXECUTIVE CAPACITY, BE JOINED AS A NECESSARY PARTY IN ANY SUCH PROCEEDING ASSERTING ANY SUCH CLAIM, TO REQUIRE EXHAUSTION OF ADMINISTRATIVE REMEDIES, TO PROVIDE FOR RULES OF CONSTRUCTION, AND GENERALLY RELATING TO NOTICES OF SUCH CLAIMS IN SUCH PROCEEDINGS**

By the Council: October 22, 2013

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, November 26, 2013 at 6:30 p.m. at the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

By Order

  
Susan W. Moran, Secretary

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**KEY**

**Boldface**..... Heading or defined term  
Underlining..... Added to existing law by original bill  
~~Strikethrough~~..... Deleted from existing law by original bill  
Double underlining..... Added to bill by amendment  
~~Double strikethrough~~ ..... Deleted from bill by amendment  
\* \* \* ..... Existing law unaffected

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that Chapter 94, Article I, entitled, “NOTICE OF CLAIMS” shall be and is hereby enacted as set forth herein:

**Chapter 94**  
**Article I – Notice of Claims**

\* \* \*

**§ 94-1. Definitions**

In this article the following definitions apply:

**Act** – any governmental action or failure to act upon which a claim is based.

**Board of commission** – The Talbot County Planning Commission, the Talbot County Board of Appeals, and all other County boards and commissions.

**County** – Talbot County, Maryland.

**County Council** – the Talbot County Council.

**County representative** – the County Council, all boards and commissions, all County officials, department heads, hearing officers, employees and authorized agents.

**Person** – in addition to an individual, this term includes a general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated association, limited liability partnership, limited liability company, the State, an agency or political subdivision of the State, a court, and any other governmental entity.

**Proceeding** – any matter that involves a public hearing before a County representative regarding any executive, administrative, quasi-judicial, quasi-legislative, or legislative item of business, including any administrative, quasi-judicial, or judicial appeal therefrom.

#### **§ 94-2. Applicability**

This article applies to any claim in any proceeding that any act or failure to act by the County or a County representative, or that a County ordinance, rule, regulation, or decision, either on its face or as applied, violates or would violate:

- (1) The Constitution of the United States or any federal laws or regulations enacted thereunder;
- (2) The Constitution of the State of Maryland or any State laws or regulations enacted thereunder;
- (3) The Talbot County Charter, or any County laws or regulations enacted thereunder.

#### **§ 94-3. Necessary party**

Talbot County, Maryland in its corporate capacity, shall be a necessary party in any proceeding to which this article is applicable.

- (1) All stages. The County shall be a necessary party that is entitled to participate in every stage of any proceeding involving any claim against the County or a County representative to which this article applies, including all administrative or quasi-judicial proceedings before any County board of commission, and all administrative, quasi-judicial, or judicial appeals therefrom.
- (2) Joinder and service. A person asserting a claim against the County or a County representative in a proceeding to which this article applies shall formally name the County as a party in any such proceeding and shall provide notice and service upon the County in accordance with the requirements of § 94-4 of this article

**§ 94-4. Service of notice required**

Any person asserting a claim against the County or a County representative in a proceeding to which this article applies shall serve a written “Notice of Claim” upon the County Manager and the County Attorney in accordance with the requirements of this section.

- (1) The Notice of Claim shall be filed in the proceeding and served with any application, petition, appeal or any request for a permit, special exception, variance, approval, or other relief.
- (2) The Notice of Claim shall be in writing and shall separately state, with particularity:
  - (a) the essential elements of the claim;
  - (b) facts on which the claimant relies; and,
  - (c) any damages and any other relief requested.
- (3) Talbot County Code § 20-14, as amended, applies to all proceedings before any County board or commission in which any person asserts a claim to which this article applies. The Notice of Claim required by this section, § 94-4, shall be served sufficiently in

advance of any public hearing to permit timely compliance with the requirements of County Code § 20-14.

- (4) Upon failure to timely comply with this section, § 94-4, and § 20-14, in any proceeding before a County board of commission to which this article applies, any public hearing or decision on the matter to which the claim relates shall be postponed and rescheduled, unless such failure is affirmatively waived on the record by the County.
- (5) Any proceeding to which this article applies, but as to which the person asserting a claim has failed to comply with the requirements of this article, shall be void and of no force or effect as to any claim by the person against the County.

#### **§ 94-5. Exhaustion required**

A person alleging any claim to which this article applies shall exhaust available administrative remedies and assert such claim in all proceedings that the claim relates to or arises from, or upon which the claim is based.

#### **§ 94-6. Rules of construction**

In this article, unless such construction would be unreasonable, the singular includes the plural and vice versa; the masculine gender includes the feminine and vice versa; the conjunctive shall also be taken in the disjunctive and vice versa; and the use of any tense of any verb shall be considered also to include with its meaning all other tenses of the verb so used. “Shall” is mandatory; “may” is permissive. “Herein,” “hereby,” “hereunder,” “hereof,” “hereinbefore,” “hereinafter” and other equivalent words refer to this article and not solely to the particular portion thereof in which any such word is used. Wherever the words “include,” “includes,” or “including” are used in this article, they shall be deemed to be followed by the words “without limitation.” The phrases “relates to,” “arises from,”

“upon which the claim is based,” or “to which the claim relates” as used in this article, means: constitute(s), refer(s) to, reflects(s), concern(s), pertain(s) to, or any way logically or factually connect(s) any proceeding, ordinance, rule, regulation, decision, act, or failure to act by the County or a County representative to any claim subject to this article.

SECTION TWO: BE IT FURTHER ENACTED, that the title and a summary of this Bill shall be published once on the first publication date after enactment of the Bill in accordance with County Charter § 213 (c). The title is not a substantive part of this Bill. If the Bill is amended, the title may be administratively revised if required to conform the title to the content of the Bill as finally enacted.

SECTION THREE: AND BE IT FURTHER ENACTED, that if any provision of this Ordinance or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Ordinance which can be given effect without the invalid provision or application, and for this purpose the provisions of this Ordinance are declared severable.

SECTION FOUR: AND BE IT FURTHER ENACTED, that the Publishers of the Talbot County Code or the Talbot County Office of Law, in consultation with and subject to the approval of the County Manager, shall make non-substantive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any internal or external reference or citation to the Code that is incorrect or obsolete, with no further action required by the County Council. All such corrections shall be adequately referenced and described in an editor's note following the section affected.

SECTION FIVE: AND BE IT FURTHER ENACTED, this article shall apply both prospectively and retroactively to all proceedings, as defined herein, including all public hearings by a County representative held before passage of this ordinance, except to the extent such application or operation would impair vested rights. It shall also apply to all stages of all pending proceedings, including all stages of any administrative or judicial appeals currently in litigation. For purposes of applying this ordinance, a proceeding is not final, regardless of whether the public hearing has or has not been held, until all administrative and judicial appeals have been exhausted or waived, and the matter has been finally concluded.

SECTION SIX; AND BE IT FURTHER ENACTED, that nothing in this ordinance shall be construed to modify or amend any requirements established by the Local Government Tort Claims Act, Courts Article § 5-301, *et.seq.* as amended or modified from time to time. This ordinance shall be construed as consistent with and complementary to all such requirements. Compliance with the requirements of this article shall not operate as a waiver, release, or relinquishment of any defense, right, privilege, or immunity otherwise available to the County or County representative.

SECTION SEVEN: AND BE IT FURTHER ENACTED, that this ordinance shall take effect sixty (60) days from the date of its passage.

**PUBLIC HEARING**

Having been posted and Notice of time, date, and place of hearing, and Title of Bill No. \_\_\_\_\_ having been published, a public hearing was held on \_\_\_\_\_.

**BY THE COUNCIL**

Read the third time.

ENACTED \_\_\_\_\_

By Order \_\_\_\_\_  
Susan W. Moran, Secretary

Bartlett -

Hollis -

Pack -

Price -

Duncan -

EFFECTIVE DATE: \_\_\_\_\_